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February 27, 2024

VIA ECF

Hon. Brian M. Cogan, U.S.D.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

**Re: In Re: Oral Phenylephrine Marketing and Sales Practices Litigation,
Case No. 1:23-md-003089**

Dear Judge Cogan:

Our office, along with numerous other law firms, represent various plaintiffs¹ in the above-referenced litigation.

We write in response to the Court's December 21, 2023 Order instructing the parties to confer and file a proposed Case Management Order ("CMO"), and to provide agreed-upon dates that counsel is available for the initial status conference. The parties hereby submit proposed CMO No. 1, annexed hereto as Exhibit A. As noted in the proposed CMO, the parties have also conferred on dates for the initial status conference and are available on the following dates: April 2, 2024, April 3, 2024, or April 10, 2024.

Proposed CMO No. 1 has been agreed to by all defendants and all but one plaintiff's law

¹ The Consensus Plaintiffs have submitted a motion for appointment of Leadership counsel. [ECF No. 135]. The motion identifies 23 law firms that would serve as proposed Leadership Counsel and further identifies over 35 additional law firms that support the proposed leadership structure (Ex. B to ECF No. 135). However, on Ex. B, the Carlson Lynch law firm was listed in error as a firm that supports the proposed leadership structure. Notably, since the filing of said motion, three more law firms, in addition to the ones identified in Ex. B, now support the proposed leadership structure.

firm of which we are aware. The one lawyer who does not agree is Ms. Jenn French, Esq. of the Lynch Carpenter law firm. Ms. French proposes that the deadline for applications for leadership positions be extended to March 19, 2024, rather than March 8, 2024. Of note, there has been no opposition to the proposed dates for the initial status conference or any other aspects of the proposed CMO No. 1.

Since the results of the FDA Advisory Committee in September 2023, the Consensus Plaintiffs and their team have been working cooperatively trying to organize and prepare for the prosecution of this case in this MDL. The Consensus Plaintiffs have worked to ensure that proposed CMO No. 1 was reviewed by all interested plaintiffs' counsel and, of course, defense counsel before submission. Following a final three-day comment period, the only lawyer to oppose its current form was Ms. French at Lynch Carpenter. Her only suggested edit was to extend the deadline for leadership applications from the current proposal of March 8, 2024, to March 19, 2024. (See Ex. A, Sect. VI).

Given that the initial application for the appointment of Leadership Counsel was filed on February 14, 2024, [ECF No. 135] and because the parties should be well-prepared and ideally formally organized in advance of an early April Case Management Conference, the Consensus Plaintiffs respectfully request that the date of March 8, 2024 be maintained, and that their motion be granted following any deadline for other applications for Leadership Counsel.

We thank the Court for its time and continued courtesies.

Respectfully submitted,

DOUGLAS & LONDON, P.C.

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Encl.

cc: All Counsel of Record (via ECF w/encl.)